IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO. 5:09-HC-2138-FL

REGINALD V. YOUNG,)	
)	
Petitioner,)	
)	
v.)	ORDER
)	
TRACY JOHNS et al.,)	
)	
Respondents.)	

Petitioner brings this action for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Presently before the court is petitioner's request for voluntary dismissal (DE # 25). Respondents have not responded. Also before the court is respondents' motion for summary judgment (DE # 22). In this posture, these matters are ripe for ruling.

An action may be dismissed voluntarily by the petitioner without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the petitioner's request except upon an order of the court. See Fed. R.Civ. P. 41(a)(2). Petitioner filed this action against Tracy Johns and the United States Parole Commission, alleging that his parole revocation, based upon his sex abuse charge, violated his rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

In this case, respondents filed a motion for summary judgment. Because respondents filed a motion for summary judgment, the petition may only be voluntarily dismissed pursuant to Rule

41(a)(2), which permits voluntary dismissal "upon such terms and conditions that the court deems proper." A petitioner's motion under Rule 41(a)(2) should not be denied absent substantial prejudice to the respondents. S.A. Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986).

As grounds for his request, petitioner states that respondents' memorandum in support of their motion for summary judgment demonstrated that he is not entitle to relief. The court finds this reasons is consistent with Rule 41(a)(2). Specifically, the court finds that respondents will not be prejudiced by petitioner's dismissal because the matter has been resolved. Accordingly, petitioner's motion for voluntary dismissal (DE # 25) is GRANTED and respondents' motion for summary judgment (DE # 22) is DENIED AS MOOT.

SO ORDERED, this the /4 day of December, 2010.

COUISE W. FLANAGAN

Chief United States District Judge